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Senator: Torricelli@Torricelli.Senate.Gov

July 20, 2001

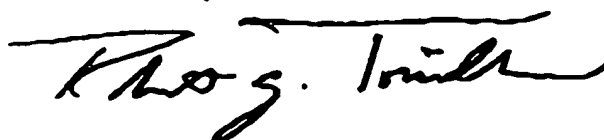
Nicholas P. Godici
Acting Undersecretary of Commerce for Intellectual Property
and Acting Director of the Patent and Trademark Office
U.S. Patent and Trademark Office
Washington, D.C. 20231

Dear Acting Director Godici:

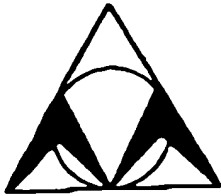
I am writing you on behalf of Blacklight Power, Inc., one of my constituent companies. Recently, I received the attached letter from Blacklight detailing what seem to be very unusual circumstances that have arisen in the course of their attempts to obtain a patent for their new and intriguing technology. In my opinion, if the allegations set forth in this letter are indeed true, they raise troubling questions about the conduct of some representatives of the Patent Office.

I ask that you look into this matter and I look forward to receiving your response to the issues raised in the attached correspondence. Thank you for your consideration and your attention to this matter.

Sincerely,



Robert G. Torricelli
UNITED STATES SENATOR



BLACKLIGHT^{SM, TM}
P O W E R inc.

493 Old Trenton Road
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Telephone (609) 490-1090
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May 10, 2001

The Honorable Robert G. Torricelli, U.S. Senator
113 Dirksen Senate Office Building
Washington, DC 20510

Re: Investigation of Improper Actions by U.S. Patent Office

Dear Senator Torricelli:

We kindly request your assistance in investigating and addressing the highly improper actions taken by the U.S. Patent and Trademark Office (PTO) against a constituent of yours, BlackLight Power, Inc. (BlackLight). These actions not only threaten the livelihood of a thriving New Jersey company, but threaten to undermine the integrity of the U.S. patent system, as well as diminish our ability to effectively cope with the looming energy crisis in this country.

BlackLight is a small start-up company located in Cranbury, New Jersey. It employs 35 individuals, most of whom are research scientists, engineers, and technicians. For the past three years since BlackLight located its operations in New Jersey, BlackLight has worked tirelessly and has spent millions of dollars developing a new, commercially feasible, clean process for producing electricity from hydrogen. BlackLight's technology represents a significant advance in the field of energy production and the company has built a substantial business and scientific team to commercialize products. This technology is based on Dr. Randell L. Mills' theory and experimentally verified process of utilizing catalysts to relax the electron in hydrogen atoms to lower energy levels to thereby release clean energy and produce novel chemical products. Rest assured that our technology is not based on "cold fusion" or other speculative technologies.

Blacklight's new energy production process and novel chemical products are easily reproducible and have been independently verified by prestigious universities, government agencies and laboratories. Early generation power cells were confirmed by MIT Lincoln Labs, INEL, Westinghouse Corporation, NASA Lewis, Chalk River National Laboratory, Thermacore Corporation, and Pennsylvania State University. The chemical products were predicted and analyzed by 20 different types of tests performed at over 20 independent laboratories. BlackLight recently submitted 22 journal articles to journals, 16 of which are presently in press or published, which broadly disclose the test results for general peer review. The articles overwhelmingly verify BlackLight's novel hydrogen chemistry by reporting data from extreme ultraviolet (EUV) spectroscopy, plasma formation, power generation, and analysis of chemical products. BlackLight has also made 22 presentations of its results at scientific meetings over the past two years. The most recent presentation at the National Hydrogen Association, 12th Annual U.S. Hydrogen Meeting and Exposition, resulted in an invitation to submit an article to the published meeting proceedings.

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Because the theory involved is revolutionary and questions the validity of basic assumptions that underlie established Quantum Mechanics, Dr. Mills' work is highly controversial. And, as always is the case in "paradigm shifting" events, both Dr. Mills and his theory have been the subjects of criticism—and even derision—by a number of established and respected sources that have acknowledged their failure to even study BlackLights' published experimental results.

The promise inherent in the ultimate commercial application of BlackLight's theory to this nation and, indeed, to all mankind is truly staggering. It represents the potential capability for mankind to harness an unlimited source of energy with vastly lower environmental impacts from harmful waste product emissions or, as with nuclear energy systems, radioactive material disposition. With the advent of this nation's ever-increasing dependency on energy from politically unstable sources overseas, rapidly escalating fuel prices, and now the prospect of rolling blackouts, such as those already occurring in California, the need for alternative low-cost, abundant sources of energy in this country has never been greater.

As an initial step in bringing its energy technology to market, BlackLight sought to protect its intellectual property rights in that technology by filing numerous patent applications in the PTO. Unfortunately, the PTO has mishandled these applications and, in so doing, has failed to carry out its Constitutional mandate to advance the progress of science.

Specifically, evidence has been uncovered regarding the PTO's improper use of outside contacts, including officials from the State Department and the American Physical Society (APS) in what appears to be a concerted effort to subvert BlackLight's technology. For instance, there is strong evidence showing that PTO officials received unidentified *ex parte* communications from competitors of BlackLight that resulted in the PTO Commissioner withdrawing from issue several BlackLight applications that had been previously allowed. [Attachment 5, February 28, 2000 and Attachment 6, January 19, 2001 letters to Director Esther Kepplinger of the PTO] Indeed, Dr. Peter Zimmerman, former Chief Scientist at the State Department, has admitted that Dr. Robert Park—spokesperson for the APS, a BlackLight competitor—uses a contact in the PTO that Dr. Park refers to as "Deep Throat" to obtain confidential information, including information relating to BlackLight's previously allowed patent applications. Following withdrawal of BlackLight's patent applications from issue, an abstract written by Dr. Zimmerman appeared on the APS' website boasting that the PTO and State Department had "fought back with success" against BlackLight. [See copy of Abstract in Attachment 6, Tab C of January 19, 2001 letter to Director Kepplinger]

Although the APS' "Deep Throat" contact has been brought to the PTO's attention on several occasions, so far, PTO officials have refused to cooperate in providing any information relating to this subject. Inasmuch as U.S. patent applications are to be held in strict confidence, obviously, any breach of that confidentiality would be deeply troubling, but particularly so if

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information was being disseminated to one of BlackLight's competitors. [See copy of July 10, 2000 Letter to State Department in Attachment 6, Tab C of January 19, 2001 letter to Director Kepplinger]

The PTO has also taken extreme positions, perhaps in concert with outside competitive forces, to thwart the granting of BlackLight's patents. These actions include muzzling and essentially replacing the Examiners who had previously allowed BlackLight's patent applications with a "Secret Committee" of PTO officials assigned the task of rejecting those applications behind "closed doors." To this day, Examiner Langel, who has 28 years of experience in prosecuting patent applications, believes BlackLight's energy patent applications represent significant technological advances and therefore are allowable. Recent discussions with Examiner Langel confirm that, while he believes the experimental evidence supporting allowance of the applications submitted by BlackLight is overwhelming, he is being instructed by the Secret Committee to reject the applications despite the lack of adequate basis to do so.

Attempts by BlackLight to learn the full composition of the PTO's "Secret Committee," including the identity of outside consultants and/or competitors who may have served illegally as committee members in further breach of PTO confidentiality, have been met with only antagonism and outright aggression. Such hostility toward patent applicants is, to our knowledge, unprecedented and in clear violation of fundamental principles of due process that can only erode the trust and confidence that the public places in the PTO.

Although BlackLight has satisfied, indeed exceeded, the statutory requirements of patentability for its novel energy technology, BlackLight's counsel and company executives met with PTO officials at an interview conducted at the PTO on February 21, 2001 in an attempt to resolve this matter. Specifically, BlackLight attempted to discern through this interview the newly-minted patent standards that were being used to thwart BlackLight's applications, as well as the composition of the Secret Committee and outside consultants that were assembled to lead the PTO's attack against BlackLight.

PTO officials attending the interview flatly refused to even discuss BlackLight's request seeking the complete identity of the PTO's Secret Committee members. Indeed, Secret Committee Examiner Jagannathan, who led the interview on behalf of the PTO, became quite indignant in his response to BlackLight's inquiry, claiming that this information was not germane to the prosecution and, in a harsh tone, threatened to shut down the interview if BlackLight further inquired into the matter. Ironically, without an initial investigation conducted by BlackLight's counsel, the identity of Secret Committee Examiner Jagannathan and his own involvement in subverting BlackLight's patent applications would never have become known and he would not have been forced to attend the interview. Unfortunately, his appearance at the interview was used as yet another opportunity to "stonewall" BlackLight's attempt to obtain answers to legitimate questions. [Attachment 1, PTO mailing dated February 12, 2001 identifying certain members of Secret Committee]

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The PTO also made clear during the interview that it did not feel constrained to follow established statutory standards of patentability—standards that BlackLight had already met in obtaining allowance upon the first complete examination—and that it was free to create new, more onerous standards of patentability that apply only to BlackLight. The PTO absolutely refused to provide any guidance as to the level of experimental evidence that would be required to once again convince the PTO to allow BlackLight's patent applications and even went so far as to require that BlackLight's experimental evidence be published and evaluated by its competitors before it could be considered. Surely, when enacting the patent statutes, Congress never intended that applicants' competitors oversee the granting of U.S. patents.

Unfortunately, prior attempts to investigate this matter by Senator Max Cleland have been similarly thwarted. Twice now, Senator Cleland has requested relevant information from the PTO and, in both instances, the PTO has refused to honor his request. [Attachment 2]

The first excuse the PTO gave for its refusal was that the matter was the subject of litigation between the PTO and BlackLight over the withdrawal of the allowed patent applications from issuance, presently pending before the Court of Appeals for the Federal Circuit. That excuse, however, is simply untrue since the parties stipulated in the litigation that any unidentified *ex parte* communications the PTO may have received from third parties resulting in the withdrawal of BlackLight's patent applications are not germane to whether the withdrawal itself was legal. Incredibly, the PTO has further argued that the present prosecution of BlackLight's patent applications is a proceeding separate and distinct from the litigation over the legality of withdrawing those applications from issue. And yet, when pressed a second time to provide information relating to the persons involved in the present prosecution of the subject applications, the PTO had the audacity to claim that such information was still not germane. [Attachment 3, Interview Summary] Please be assured that the limited information BlackLight seeks regarding the PTO's improper actions is not the subject of any litigation and, thus, the PTO's refusal to provide that information will not be resolved by any pending court proceeding.

Other attempts to extract this information from the PTO through official government channels have also failed. For instance, BlackLight sought to have Secretary of Commerce Donald Evans conduct an inquiry into this matter since his Department has direct jurisdiction over the administration of the PTO. Secretary Evans' office, however, declined to intervene believing that there were "no compelling reasons" to do so and merely referred the matter back to the PTO. [Attachment 4, February 14, 2001 letter from Nicholas P. Godici, Acting Under Secretary of Commerce for Intellectual Property]

The PTO's continued avoidance in dealing with this inquiry is simply unacceptable and so we are now turning to you for help. The commercial deployment of BlackLight's technology in the U.S. stands to significantly impact our country's energy policies in a very positive way and, in the process, bring notoriety to the State of New Jersey. The fair administration of the

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May 10, 2001

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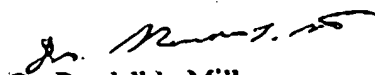
patent examination process, which hopefully will once again lead to the granting of patents on that technology, is an important step in that direction. Critical not just to BlackLight, but to all patent applicants, is knowing that the PTO is conducting itself with the utmost integrity and candor in the examination process. One way to assure ourselves of maintaining this worthy objective would be, with your help, to initiate an investigation into the PTO's improper actions by the General Accounting Office.

Any suggestions as to other actions we might take or other assistance you can provide in resolving this unfortunate situation would be greatly appreciated. Should you require any additional information regarding this matter, please feel free to contact my counsel, Jeffrey S. Melcher (202.261.1045) or Jeffrey A. Simenauer (202.261.1001), with any questions you may have.

In addition, in view of the potential importance of BlackLight's research to the United States and its close proximity to your New Jersey offices, we would be honored if you and certain of your staff would visit the company's facility in Cranbury for a personal briefing and tour of the laboratories, and witness for yourself the performance of our demonstration devices.

Thank you for your consideration of this important matter.

Sincerely yours,



Dr. Randall L. Mills

President, BlackLight Power, Inc.

Attachments



UNITED STATES
PATENT AND
TRADEMARK OFFICE

Administrator for External Affairs
Washington, DC 20231
www.uspto.gov

The Honorable Robert G. Torricelli
United States Senate
Washington, D.C. 20510-3003

AUG 14 2001

Dear Senator Torricelli:

Thank you for your letter on behalf of Dr. Randell L. Mills, President, Blacklight Power, Inc., regarding patent application serial number 09/009,294, and the circumstances concerning its withdrawal from issuance by the United States Patent and Trademark Office (USPTO).

Dr. Mills expresses concerns of "improper" acts by the USPTO, including the possibility of inappropriate communications with outside parties, with particular regard to the withdrawal of that application from allowance. In doing so, he offers a number of allegations to support his concerns.

However, the withdrawal from issue of patent application serial number 09/009,294 is the subject of litigation in the case of *Blacklight Power, Inc. v. Dickinson*, Civ. No. 00-0422 (D.D.C.). The case is currently on appeal to the Court of Appeals of the Federal Circuit from final judgment entered in favor of the USPTO on August 15, 2000, in the district court. Although Dr. Mills states that he does not consider the information requested regarding outside contacts, among other items, to be the subject of the litigation, it is our view that these issues were raised in the ongoing litigation. It would be inappropriate, therefore, to comment on this matter in detail. Furthermore, the application is still pending and the applicant possesses all procedural remedies, including, but not limited to, the opportunity to seek judicial relief.

In light of the pending status of the relevant litigation, any additional comment by the USPTO would be inappropriate.

We trust the foregoing will be useful in responding to your constituent. For your information, a similar letter of response about this matter is also being sent to Senator Jon S. Corzine.

Sincerely,

Robert L. Stoll
Administrator for External Affairs